

§ 9901.409

(1) Consists of a narrative description addressing employee performance, accomplishments and contributions during that appointment; and

(2) May serve as documentation and justification for recognition under 5 U.S.C. chapter 45.

§ 9901.409 Monitoring and developing performance.

(a) In applying the requirements of the performance management system and its implementing issuances and policies, supervisors will—

(1) Monitor the performance of their employees and their contribution to the organization;

(2) Provide ongoing (*i.e.*, regular and timely) feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period; and

(3) Document at least one interim performance review. Documented interim reviews are not required for overall periods of performance of less than 180 days.

(b) Developing performance is integrated with the performance management process and is a shared responsibility of management and employees. Developing performance includes but is not limited to—(1) Coaching and mentoring employees;

(2) Reinforcing strengths and addressing weaknesses; and

(3) Discussing employee development opportunities.

§ 9901.410 Addressing performance that does not meet expectations.

(a) If at any time during the appraisal period a supervisor determines that an employee's performance is not meeting expectations, the supervisor will—

(1) Identify and communicate to the employee the specific performance deficiencies that require improvement;

(2) Consider the range of options available to address the performance deficiency, including remedial training, improvement periods, reassignment, oral warnings, letters of counseling, written reprimands, or adverse action (including a reduction in rate of

5 CFR Ch. XCIX (1–1–11 Edition)

basic pay or pay band or a removal); and

(3) Take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences.

(b) Adverse actions taken based on unacceptable performance and/or conduct will be taken in accordance with the provisions in 5 U.S.C. chapter 75 or other appropriate procedures if not covered by chapter 75, such as procedures for National Guard Technicians under 32 U.S.C. 709(f).

§ 9901.411 Appraisal period.

(a) Except as provided in paragraphs (a)(1) through (3) and (b) of this section, the appraisal period will be October 1 to September 30.

(1) The appraisal period may begin after October 1 and end after September 30 for newly converted groups of employees;

(2) The appraisal period may begin after October 1 for employees who move to an NSPS position from a non-NSPS position after that date; and

(3) The appraisal period may end between July 3 and September 30 for employees receiving early annual recommended ratings.

(b) If, by the end of the appraisal period, an employee has not met the minimum period of performance, management may extend the appraisal period provided such extensions do not—

(1) Delay the payout for the applicable pay pool; or

(2) Extend beyond the rating of record effective date.

(c) The effective date of ratings of record will be January 1, except for additional ratings of record as described in § 9901.412(b)(2).

(d) The effective date of a rating of record described in § 9901.412(b)(2) is the date the rating is final, as described in paragraph (g) of § 9901.412.

§ 9901.412 Rating and rewarding performance.

(a) Forced distribution of ratings (setting pre-established limits for the percentage or number of ratings that may be assigned at any level) is prohibited.

(b) An appropriate rating official—

Department of Defense, OPM

§9901.412

(1) Will prepare and recommend a rating of record after the completion of the appraisal period; and

(2) May recommend an additional rating of record following an unacceptable rating of record to reflect a substantial and sustained change in the employee's performance since the last rating of record.

(c) The recommended rating of record is subject to higher-level review.

(d) A rating of record will assess an employee's performance with respect to his or her performance expectations, as amplified through work assignments or other instructions, and/or relative contributions.

(e) If an employee engages in work-related misconduct and the nature or severity of that misconduct has an impact on the execution of his or her duties, that of the team, and/or that of the organization, the impact may be considered in the employee's rating of record.

(f) A Pay Pool Panel will —

(1) Review recommended ratings of record, share assignments, and payout distributions, and make adjustments, which in the panel's view would result in equity and consistency across the pay pool; and

(2) Afford the rating official the opportunity to provide further justification of a recommended rating of record before a change to that rating becomes final.

(g) Consistent with the requirements of merit system principles and this part, the Pay Pool Manager is the approving authority for Pay Pool Panel recommendations concerning ratings of record, share assignments, and payout distribution. A rating of record is considered final when issued to the employee with all appropriate reviews and signatures.

(h) An appropriate rating official will communicate the final rating of record, share assignment, and payout distribution to the employee.

(i) Once the minimum performance period is met and an employee is eligible for a rating of record, the rating of record of an employee may not be lowered based on an approved absence from work, including the absence of a disabled veteran to seek medical treat-

ment as provided in Executive Order 5396.

(j) A rating of record issued under this subpart—

(1) Is an official rating of record for the purpose of any provision of this title for which an official rating of record is required;

(2) Will be transferred between subordinate organizations and to other Federal departments or agencies in accordance with implementing issuances;

(3) Will be used as a basis for—

(i) A pay determination under any applicable pay rules;

(ii) Determining reduction-in-force retention standing; and

(iii) Such other action that the Secretary considers appropriate, as specified in implementing issuances;

(4) Will cover a specified appraisal period; and

(5) Will not be carried over as the rating of record for a subsequent appraisal period without an actual evaluation of the employee's performance during the subsequent appraisal period.

(k) Employees who change pay pools after the last day of the appraisal period and before the effective date of the payout will be evaluated and assigned a rating of record by the Pay Pool Manager associated with the pay pool of record on the last day of the appraisal period and the share assignment and payout distribution determination will be made in accordance with §9901.342(g).

(l)(1) An early annual recommended rating of record will be issued when—

(i) The supervisor (or rating official if different) ceases to exercise the duties relative to monitoring, developing, and rating employee performance within 90 days before the end of the appraisal period; or

(ii) The employee is reassigned, promoted, or reduced in band resulting in the assignment of a new rating official within 90 days before the end of the appraisal period.

(2) An employee who is eligible for a recommended rating of record or an early annual recommended rating of record at the time they move to a position outside of NSPS will be entitled to a rating of record. Such ratings of record must be approved through the Pay Pool Panel process.

§ 9901.413

(m) At any time prior to the last 90 days of the appraisal period, a supervisor or other rating official may prepare a performance assessment (e.g., close-out assessment) for the purpose of providing input on an employee's performance to a new supervisor. Such an assessment is not a rating of record (recommended or final).

§ 9901.413 Reconsideration of ratings.

(a) *Nonbargaining unit employees.* (1) A rating of record or job objective rating may be challenged by a nonbargaining unit employee only through the reconsideration process specified in this subpart and implementing issuances. This process will be the sole and exclusive agency administrative process for all nonbargaining unit employees to challenge a rating of record.

(2) Consistent with this part, Pay Pool Managers will decide job objective rating and rating of record reconsiderations.

(3) If the Pay Pool Manager decision is challenged, consistent with this part, the Performance Review Authority will make a final decision.

(4) A share assignment determination, payout distribution determination, or any other payout matter will not be subject to the reconsideration process or any other agency administrative grievance system.

(b) *Bargaining unit employees.* (1) Negotiated grievance procedures are the exclusive administrative procedures for bargaining unit employees to challenge a rating of record or job objective rating as provided for in 5 U.S.C. 7121.

(2) If a negotiated grievance procedure is not available to a bargaining unit employee or challenging a rating of record or job objective rating is outside the scope of the employee's negotiated grievance procedure, a bargaining unit employee may challenge a rating of record or job objective rating in accordance with this subpart and implementing issuances.

(c) *Recalculation based on adjusted job objective rating or rating of record.* In the event a reconsideration or negotiated grievance decision results in an adjusted job objective rating or rating of record the revised rating will be referred to the Pay Pool Manager for re-

5 CFR Ch. XCIX (1–1–11 Edition)

calculation of the employee's performance payout amount and distribution.

(1) Any adjustment to salary will be retroactive to the effective date of the performance payout.

(2) Salary adjustments will be based on the share range appropriate for the adjusted rating of record as identified in § 9901.342(f).

(3) Share values for the adjusted rating of record will reflect the share value paid to other members across the pay pool for that rating cycle.

(4) Decisions made through the reconsideration process or a negotiated grievance procedure will not result in recalculation of the payout made to other employees in the pay pool.

(d) *Alternative dispute resolution.* Alternative dispute resolution techniques, such as mediation, interest-based problem-solving, or others, may be pursued at any time during the reconsideration process consistent with the Component's policies and procedures.

Subpart E—Staffing and Employment

AUTHORITY: 5 U.S.C. 9902.

SOURCE: 74 FR 2764, Jan. 16, 2009, unless otherwise noted.

GENERAL

§ 9901.501 Purpose.

(a) This subpart sets forth policies and procedures for the recruitment for, and appointment to, positions; and assignment, reassignment, detail, transfer, or promotion of employees, consistent with 5 U.S.C. 9902(a) and (i).

(b) The Secretary will comply with merit principles set forth in 5 U.S.C. 2301 and with 5 U.S.C. 2302 (dealing with prohibited personnel practices).

(c) The Secretary will adhere to veterans' preference principles set forth in 5 U.S.C. 2302(b)(11), consistent with 5 U.S.C. 9902(i).

§ 9901.502 Scope of authority.

When a specified category of employees, applicants, and positions is covered by the system established under this subpart, the provisions of 5 U.S.C.